

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 8561

Investigation pursuant to 30 V.S.A. §§ 30 and 209)
regarding the Construction and Operation of a)
Metereological Tower located in Swanton, Vermont)

Order entered: 1/4/2016

PROCEDURAL ORDER RE: PROTECTIVE ORDER

On October 12, 2015, the Vermont Department of Public Service ("DPS" or the "Department") served on Travis Belisle (the "Respondent") an interrogatory in its first set of information requests which requested at question 9 that the Respondent "[p]lease state Mr. Belisle's income for 2014."¹ On November 3, 2015, the Respondent filed a Motion for Rule 26(c) Protective Order (the "Belisle Motion") with the Vermont Public Service Board (the "Board"). The Belisle Motion attached a proposed protective order which states that "Mr. Belisle does not oppose production of the information but he requests that the Board allow him to produce it under seal."² In this Order, I grant the Belisle Motion.

On November 16, 2015, I requested that the parties file any comments in response to the Belisle Motion by November 30, 2015. On November 30, 2015, the Department filed comments stating that it did not object to the Belisle Motion "provided the Department receives the information requested in discovery under seal in accordance with an order issued by the Board." No other comments were filed on the Belisle Motion.

Rule 26(c) authorizes issuance of protective orders to protect a person from "annoyance, embarrassment, oppression, or undue burden." I find good cause to preserve the alleged confidentiality of the Respondent's response to question 9 of the Department's interrogatories while facilitating the exchange of information during the discovery phase of this proceeding.

¹*First Set of Information Requests Served on Travis Belisle by the Vermont Department of Public Service*, Docket 8561, filed 10/12/15 at 4.

²*Respondent's Proposed Protective Order*, Docket 8561, filed 11/3/15 at 1.

Accordingly, I grant the Belisle Motion. Today's Protective Order shall govern only the protection of the response to question 9 of the interrogatories in the first set of DPS information requests of the Respondent to be provided to the Department in discovery in this proceeding.

Therefore, IT IS HEREBY ORDERED that the allegedly confidential information to be provided by the Respondent in response to question 9 of the interrogatories in the first set of DPS information requests of the Respondent provided in discovery shall be treated in this proceeding as follows:

1. Mr. Belisle shall provide a response to the Department's request for his 2014 income by filing it with the Department in a sealed envelope on which shall be endorsed the caption and Docket number of this proceeding and a statement that it shall not be opened or released from the custody of the Vermont Department of Public Service except by order of the Board.

2. Counsel for the Department are permitted to open the sealed envelope and review the information in connection with their duties in this investigation. Counsel will cause the envelope to be resealed and labeled in accordance with paragraph 1 above immediately following review. Counsel may disclose the information to any other Department staff, officials, and consultants who are specifically authorized by the Counsel for the Department to assist the Counsel in this proceeding, but any specifically-designated assisting person shall not disclose the Respondent's 2014 income to any person other than Counsel for the Department.

3. Counsel for the Department shall place all notes or other documents that use, discuss, and reveal the Respondent's 2014 income in a sealed record by filing such information in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and Docket number of this proceeding and a statement that it shall not be opened or released from the custody of the Vermont Department of Public Service except by order of the Board.

4. If the Department wishes to prefile the Respondent's 2014 income as testimony or an exhibit, the Department must give 5 business days advance notice to counsel for the Respondent. The Department or the Respondent may move the Board for an order that the testimony or exhibit be filed under seal or under other conditions to prevent unnecessary disclosure.

- a. If such motion is filed within the 5-business-day advance notice period, the Department shall place the motion in a sealed record by filing such documents with the Board in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and docket number of the proceeding, the nature of the contents (exhibit, report, etc.), and a statement that it shall not be opened or released from custody of the Clerk of the Board except by order of the Board or Hearing Officer. Notwithstanding such a statement, the members of the Board, and any employee or consultant specifically authorized by the Board to assist the Board in this proceeding and any Hearing Officer appointed to this Docket, may have access to such sealed allegedly confidential information, but shall not disclose the contents of any such sealed information to any person. The Board will then determine whether the proffered evidence should continue to be treated as confidential information and, if so, what protection, if any, may be afforded to such information.
 - b. If no such motion is filed by the end of the 5-business-day advance notice period, the testimony and exhibits may be filed as a document available for public access.
5. At any hearing or conference in this proceeding, no witness may be questioned with respect to any allegedly confidential information unless examining counsel has provided advance notice to Respondent's counsel. To the extent possible, such notice shall be given prior to the commencement of the hearing or conference. Any party may move the Board for an order that the testimony be received in camera or under other conditions to prevent unnecessary disclosure. If such motion is made, the Board will then determine whether the testimony should be received in camera or subject to other protection.
6. The Respondent may make a written request to the Department for the return of allegedly confidential information within 60 days of the Board's final order in this proceeding. Within 60 days of such a request the Department shall: (a) return the allegedly confidential information to the Respondent's counsel, unless the allegedly confidential information has been made public; (b) destroy any notes taken or other documents that use, discuss, and reveal the Respondent's 2014 income which has not been made public; and (c) advise the counsel for the Respondent in writing that the requirement of this paragraph have been met. Notwithstanding

the foregoing, nothing in this paragraph shall require the Department to destroy notes, documents, or information in violation of statute.

7. The Board retains jurisdiction to make such amendment, modifications and additions to this Order as it may deem appropriate.

SO ORDERED.

Dated at Montpelier, Vermont, this 4th day of January, 2016.

s/Michael E. Tousley
Michael E. Tousley, Esq.
Hearing Officer

OFFICE OF THE CLERK

FILED: January 4, 2016

ATTEST: s/Judith C. Whitney
Acting Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@vermont.gov)